

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

Terry H. Capone,	)	C/A No. 3:19-2490-CMC-PJG
	)	
Plaintiff,	)	
	)	
v.	)	<b>ORDER</b>
	)	
City of Columbia,	)	
	)	
Defendant.	)	
	)	

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Plaintiff Terry H. Capone, a self-represented litigant, filed this employment discrimination action pursuant to Title VII of the Civil Rights Act of 1964 (“Title VII”), 42 U.S.C. §§ 2000e, et seq.; and the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12101 et seq. This matter is before the court pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) (D.S.C.) on Plaintiff’s motion to recuse the assigned magistrate judge. (ECF No. 74; Suppl., ECF No. 75.) Finding no basis for recusal, the court denies Capone’s motion.

Recusal of federal judges is generally governed by 28 U.S.C. § 455.<sup>1</sup> Subsection (a) of § 455 provides that “[a]ny justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.” In the Fourth Circuit, this standard is analyzed objectively by considering whether a person with knowledge of the relevant facts and circumstances might reasonably question the judge’s impartiality. United States v. Cherry, 330 F.3d 658, 665 (4th Cir. 2003). For purposes of this statute, the hypothetical “reasonable person” is not a judge, since judges, who are trained to regard matters impartially and are keenly aware of that obligation, “may regard asserted conflicts to be more innocuous than an

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<sup>1</sup> Notably, § 455 largely tracks the language of Canon 3(C) of the Code of Conduct for United States Judges, which also governs recusal of federal judges.

outsider would.” United States v. DeTemple, 162 F.3d 279, 287 (4th Cir. 1998). The “reasonable person” is a “well-informed, thoughtful observer,” but not one who is “hypersensitive or unduly suspicious.” In re Mason, 916 F.2d 384, 386 (7th Cir. 1990).

Section 455(a) does not require recusal “simply because of unsupported, irrational or highly tenuous speculation,” or because a judge “possesses some tangential relationship to the proceedings.” Cherry, 330 F.3d at 665 (internal quotation omitted). The Fourth Circuit recognizes that overly cautious recusal would improperly allow litigants to exercise a “negative veto” over the assignment of judges simply by hinting at impropriety. DeTemple, 162 F.3d at 287. Recusal decisions under § 455(a) are “fact-driven and may turn on subtleties in the particular case.” United States v. Holland, 519 F.3d 909, 913 (9th Cir. 2008).

Subsection (b) of § 455 further provides a list of specific instances where a federal judge’s recusal is mandated, regardless of the perception of a reasonable observer. Liteky v. United States, 510 U.S. 540, 567 (1994) (Kennedy, J., concurring). Pertinent here, § 455(b)(1) disqualifies a judge “[w]here he has a personal bias or prejudice concerning a party.” 28 U.S.C. § 455(b)(1). Bias or prejudice must be proven by compelling evidence. Brokaw v. Mercer Cty., 235 F.3d 1000, 1025 (7th Cir. 2000). Moreover, the United States Supreme Court has made clear that to warrant disqualification, “[t]he alleged bias or prejudice . . . must stem from an extrajudicial source . . . other than what the judge learned from his participation in the case.” United States v. Grinnell Corp., 384 U.S. 563, 583 (1966). In applying the extrajudicial source doctrine, the Supreme Court has held that

judicial rulings alone almost never constitute a valid basis for a bias or partiality motion. In and of themselves (i.e., apart from surrounding comments or accompanying opinion), they cannot possibly show reliance upon an extrajudicial source; and can only in the rarest circumstances evidence the degree of favoritism or antagonism required . . . when no extrajudicial source is involved.

Liteky v. United States, 510 U.S. 540, 555 (1994) (citation omitted).

Here, Capone appears to argue that the assigned magistrate judge's rulings in a prior case violated his due process rights. Importantly, Capone points to no extrajudicial source of bias or prejudice. Moreover, as stated above, mere disagreement with judicial rulings and unsupported allegations of bias are insufficient to warrant recusal. Accordingly, it is

**ORDERED** that the plaintiff's motion to recuse is denied.

**IT IS SO ORDERED.**

May 8, 2020  
Columbia, South Carolina

  
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Paige J. Gossett  
UNITED STATES MAGISTRATE JUDGE